

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

ARBUTUS BIOPHARMA CORP., <i>et al.</i>)	
)	
Plaintiff,)	
)	
v.)	
)	C.A. No. 22-252-MSG
MODERNA, INC., <i>et al.</i>)	
)	
Defendant.)	
)	

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Professor Adam Mossoff and the *Amici Curiae* identified below (collectively “*Amici*”) respectfully move this Court, for leave to file the Letter Brief attached hereto as Exhibit A, as *Amici Curiae* in response to the Statement of Interest filed by the United States of America (the “Government”) (D.I. 49) and the Court’s February 16, 2023 Order requesting briefing on the impact of the Government’s Statement of Interest (D.I. 51). In support of this motion, *Amici* state the following:

1. On November 2, 2022, the Court issued a Memorandum Opinion denying the Moderna Defendants’ partial motion to dismiss the complaint filed in the above captioned action under 28 U.S.C. § 1498(a) (the “Opinion”). (D.I. 31.)
2. The Opinion noted that a determination on the applicability of Section 1498(a) was premature because, among other reasons, the Government had not filed a statement of interest in this action providing its express consent to the complained actions. (*Id.*)
3. On February 14, 2023, the Government filed a Statement of Interest. (D.I. 49.)

4. In response, the Court directed the Government and the parties to submit letter briefs of “no more than pages regarding the impact of the Government’s Statement of Interest on the scheduling of this matter.” (D.I. 51.)

5. *Amici* are law professors, scholars, and former government officials who have researched and published in patent law, takings law, or both. They have an interest in ensuring the integrity of the patent system and the proper application of the federal government’s eminent domain power to patented inventions, but otherwise have no stake in the parties or in the outcome of this case.

6. *Amici* seek leave to offer supporting legal analysis that is necessary for this Court to consider in light of the Statement of Interest by the Government: The express text, legislative history, and judicial interpretation of Section 1498 establish that this is an eminent domain statute that has no applicability to the purchase contract between the Moderna Defendants and the federal government.

7. Plaintiffs have consented to the filing of this Letter Brief on behalf of the *Amici*; the Moderna Defendants oppose this filing. Since the Government is not yet a party to this action, the *Amici* did not seek the Government’s position on this motion.

WHEREFORE, *Amici* respectfully request that the Court grant this Motion and accept the Letter Brief attached hereto as Exhibit A.

[Remainder of page intentionally left blank.]

Dated: March 2, 2023

BAYARD, P.A.

/s/ Stephen B. Brauerman
Stephen B. Brauerman (No. 4952)
600 N. King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-500
Facsimile: (302) 658-6395
sbrauerman@bayardlaw.com

*Attorneys for Proposed Amici Law Professors,
Scholars, and Former Government Officials*